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From:

Sent: Thursday, March 17, 2011 2:54:38 PM

To:

Cc:

Subject: 6651(a)(1) Question

You asked for our thoughts on asserting the section 6651(a)(1) penalty for the taxpayer's failure to file the and gift tax returns. Section 6651(a)(2) imposes a penalty for the failure to file a return by the prescribed due date unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Reasonable cause requires the taxpayer to satisfy the burden of proving that the failure to timely file was in fact due to reasonable cause and not willful neglect. Reasonable cause requires the taxpayer to demonstrate that he exercised ordinary business care and prudence but was nevertheless unable to file/pay within the prescribed time. Willful neglect involves a conscious, intentional failure or reckless indifference. See United States v. Boyle, 469 U.S. 241, 245 (1985); E. Wind Indus., Inc. v. United States, 196 F.3d 499, 504 (3d Cir. 1999); Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001).

One of the factors that may be used, in part, to evaluate whether the taxpayer exercised ordinary care is whether circumstances beyond the taxpayer's control contributed to the non-filing of the return. Here, the taxpayer's illness may have played a role in the non-filing but the facts you have submitted do not make it entirely clear. Further, the taxpayer was competent enough to engage in a real estate transaction during and received income from the sale.

Based on the limited facts that you provided, it is reasonable to assert the section 6651(a)(1) penalty with the respect to the and gift tax returns because they were not timely filed and the facts submitted do not prove reasonable cause. The estate will be given an additional opportunity to show reasonable cause at the administrative level.